



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,382	06/14/2001	Donna Spero	2224.005	6882

7590 11/21/2003
Andrew S. Langsam, Esq.
Levisohn, Lerner, Berger & Langsam
Suite 2400
757 Third Avenue
New York, NY 10017

EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
----------	--------------

3727

DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/881,382

Applicant(s)

SPERO, DONNA

Examiner

Tri M. Mai

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Amendment B dated 04/14/2003 has been physically entered.
2. The finality of the previous Office Action is withdrawn.

Specification

3. The amendment filed 11/1/02 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: portion 33A being the plastic material.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. Claims 1-3, and 5-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not teach the selectively incremental or full access to the compartments. This is a new matter rejection.

Drawings

5. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 10/29/2002 have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121(a)(6) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of: a) portion 36 has a larger size in the original drawing, b) portions 36 and 38 are attached to the panel 30, this is not shown

Art Unit: 3727

in the original drawings c) portions 49 and 14 extend the whole length of the panels in the original drawings, d) there is only one hinge line 41 in the original drawing, e) the handles 16 are attached to the outside of the bag in the original drawings, f) the attachment below portion 45 and 43, g) the seam at portion 45 and 43.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lined plastic in claim 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 103

6. Claims 1, 2, 5-11, and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medow (4683570) in view of Manning (3143748). Medow teaches a bag having first and second panels 14b and 14c having side edges substantially perpendicular to the connection at 14a, compartments 46 and others as shown in Figs 3 and 5, and securing means 90. Medow meets all claimed limitations except for the securing means on the side edges. Manning teaches that it is known in the art to provide securing by hook and loop fasteners on the side edges as shown in Figs. 2 and 4. It would have been obvious to one of ordinary skill in the art to provide the hook and loop fasteners on the side edges in Medow as taught by Manning to provide added security and/or to keep the inside contents from falling out.

With respect to the bag may be opened with one hand and either incrementally or fully accessed, the modified bag of Medow is capable to be operated in the intended manner.

The pockets inside Medow are capable of storing the various items as claimed.

Regarding claim 8, please note the pocket 56.

Regarding claim 9, please note the pouch formed by section 58 and wall 14c in Fig. 5.

Art Unit: 3727

Regarding claim 11, the bag in Medow is made of plastic, i.e., it is lined with plastic. In the very least, portion 36 in Fig. 5 is considered one of the liners, and most of the compartments in Medow is capable of holding wipes.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Medow in view of Manning, as set forth above in paragraph 6, and further in view of Fournier (6193034). The modified container of Medow meets all claimed limitations except for the second handle.

Fournier teaches that it is known in the art to provide a second handle (two handles 5). It would have been obvious to one of ordinary skill in the art to provide a second handle in Medow in view of Fournier as taught by Fournier to carry the bag securely.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Medow in view of Manning, as set forth above in paragraph 6, and further in view of either Adams (4739809) or Chase (D157736). Medow meets all claimed limitations except for the slit in the compartment for holding wipes. Either Adams or Chase teaches that it is known in the art to provide a compartment having a slit (132 in Adams and Fig. 4 in Chase). It would have been obvious to one of ordinary skill in the art to provide compartment having a slit in Medow as taught by either Adams or Chase to dispense folding wipes/tissues easily.

Response to Arguments

9. Applicant's arguments filed 06/25/03 and 10/29/03 have been fully considered but they are not persuasive.

Adding to the previous response as set forth in the previous Office Action.

With respect to the specification, it is noted that in the original drawing do not show any liner all and furthermore. The original drawing of Fig. 2 show that portion 32 is a slit

Art Unit: 3727

(specification, line 1). There is no showing of a liner at all. Applicant's new drawing show that the area of portions 32 and 33A are both a slit and a liner is confusing and clearly constitutes a new matter in the application. The application does not have the specificity of such a liner in that particular area of the slit. The objection to the specification stands.

With respect to the first paragraph new matter rejection, it is submitted that the amended claim provide added specificities to the use of the hook and loop fasteners. The original application does not teach the incremental or full access to the bag. Furthermore, claim 1 does not set forth a hook and loop fasteners. Furthermore, it appears applicant is specifically using this functionality as grounds for patentability. In the Manning reference, applicant asserts that combination Manning does not teach the incremental opening or closing of the device. However, this would be inherent with the use of the same type of fasteners in applicant's invention.

With respect to the disapproval of the drawings, it is noted that the drawings introduce new matters into the application. Applicant argues that these features are not being claimed and thus, cannot be considered as new matter. It is noted:

37 CFR 1.53. Application number, filing date, and completion of application.

(a) Application number. Any papers received in the Patent and Trademark Office which purport to be an application for a patent will be assigned an application number for identification purposes.

*(b) Application filing requirements - Nonprovisional application. The filing date of an application for patent filed under this section, except for a provisional application under paragraph (c) of this section or a continued prosecution application under paragraph (d) of this section, is the date on which a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75, and any drawing required by § 1.81(a) are filed in the Patent and Trademark Office. **No new matter may be introduced into an application after its filing date.** A continuing application, which may be a continuation, divisional, or continuation-in-part application, may be filed under the conditions specified in 35 U.S.C. 120, 121 or 365(c) and § 1.78(a).*

Clearly, 37 CFR 1.53 prohibits the introduction of new matter into the whole application, and not specific to the claims.

With respect to the new matter in the drawings, the drawings clearly inject new matters into the drawings as set forth above. Applicant asserts that the cited reasons are not of any significant to the claimed invention. It is submitted that the drawings are part of the specification, and the introduction of new matter into the application is prohibited. Furthermore, as set forth above, the new features added to the drawings are significant.

With respect to the drawing objection 37 CFR 1.83(a), as set forth above, the drawings must show every feature of the invention specified in the claims. In view of the new matter objection in the specification, the objection under 37CFR 1.83(a) is maintained.

Similar to applicant's arguments filed 10/29/02, applicant argues that the reference fails to teach the tugging downward the other panel. Clearly in combination with Manning, the bag in Medow is capable of function the intended manner. Furthermore, it is noted that Furthermore, with respect to the assertion that Manning reference is not relevant because it pertains to a mat and not classified in the bag art. It is submitted that the Manning reference is classified in both classes 383 (bag) and 190 (luggage).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Art Unit: 3727

In this case, placing the fasteners on the two sides is well known in the art as shown in the cited references of Coates, Hoover, Lopes, etc. Clearly, there are numerous teachings of the prior art itself and within the references themselves.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

T.M. 11/18/07